
Mexico's Labor Law Reform on "Work From Home".

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On December 9, 2020, the Mexican Federal Congress approved a bill amending the Mexican Federal Labor Law ("FLL") regarding telework or "work from home" (WFH), formally regulating this work modality and its conditions, as well as outlining the obligations of the workers and the employers under this modality (the "Bill"). The Bill will come into force one day after its publication in the Federal Official Gazette.

Telework

In this Bill, telework is defined as the subordinated work performed in places other than the employer's facility, without requiring the physical presence of the worker in the workplace, and using information and communication technologies for the contact and direction among the employer and the worker (the "Telework"). Any employment whereby more than 40% of the work is performed at the worker's domicile or at one chosen by him, shall be considered as telework and thus, construed under the rules of Telework.

Conditions and General Aspects of the Telework

- The Telework conditions shall be established by written agreement, which shall specify, in addition to the ordinary requirements set forth by the FLL, the following: (i) nature and characteristics of the work; (ii) work equipment and supplies; (iii) description and amount to be paid by the employer for the Telework; (iv) contact and supervision mechanisms between the parties; and (v) the duration and distribution of the working hours, which may not exceed the maximum permitted by the FLL.
- The parties may agree for the Telework to be performed in a location selected by the worker and the employer, in the employer's own residence, or simply in a location chosen by the employer, while allowing him to change the location as required.
- The change from on-site modality to Telework shall be voluntary and in writing, except for a duly evidenced force majeure, and such change could be reverted.
- The special safety and health conditions for Telework, including ergonomic and psychosocial elements, shall be determined in the future by the Ministry of Labor and Social Welfare.
- The mechanisms, operating systems and any other technology used to supervise the Telework shall be proportional with their purpose, ensuring the privacy and data protection rights of the teleworkers. Under extraordinary conditions, or when the nature of the work calls for it, video surveillance and audio surveillance may be employed for the supervision of the Telework
- The employer may carry out inspections in the worker's home to verify that the location's conditions comply with the required safety, health, amenity and isolation needs, although such inspections may not violate the worker's privacy rights.
- The labor inspectors shall have special attributions and obligations, such as: (i) confirming that the employers keep a record of the supplies delivered to the teleworkers; (ii) monitoring the compliance with workplace safety and health obligations; (iii) verifying that the salaries of the teleworkers are not inferior to the ones received by on-site workers performing equal or similar work; and (iv) ensuring the compliance with the employers' special obligations.

New Obligations for the Employers and the Workers

The Telework employers will have the following new obligations: (i) supply, install and provide maintenance of the equipment necessary for the Telework, including computer equipment, ergonomic chairs, printers, and others; (ii) receive the work and timely pay the salaries; (iii) assume the costs of the telecommunication services and proportional part of electricity bills; (iv) keep a record of the supplies provided to the teleworkers in compliance with the provisions on work safety and health; (v) implement data security mechanisms; (vi) respect the teleworkers' right to disconnect at the end of the work day; (vii) register the teleworkers with the Mexican Social Security Institute; (viii) implement training mechanisms to ensure the workers' adaptation to the Telework; and (ix) promote the work balance of the teleworkers, and the equal treatment on salaries, training, social security and access to better work opportunities, in relation with the on-site workers.

On the other hand, the teleworkers shall: (i) have the upmost care in keeping and safeguarding the equipment, materials and supplies provided by the employer; (ii) timely inform the costs agreed for the use of telecommunication and electricity services; (iii) obey and comply with the work safety and health provisions; (iv) take into account and use the mechanisms and operating systems for the supervision of his work; and (v) take into account the data protection policies and mechanisms in his work, and the restrictions on their use and storage.

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